



# TRECAdvisor

Texas Real Estate Commission ★ Volume 13, Number 3 ★ September 2002

## Commission Approves Legislative Appropriations Request, Considers Possible Legislative Recommendations

### LEGISLATIVE APPROPRIATIONS REQUEST

For Fiscal Years 2004 and 2005

Submitted to the Governor's Office of Budget, Planning and Policy  
and the Legislative Budget Board

By

TEXAS REAL ESTATE COMMISSION

#### Commission Members

Charles Michael Brodie, Chairman  
Lawrence D. Joki, Vice Chairman  
John Walton, Secretary  
James N. Austin  
Ramon M. Cantu  
Maria Gonzalez-Gil  
Louise Hull  
Paul Jordan  
Kay Sutton

#### Dates of Terms

1997-2003  
1999-2005  
2001-2007  
1999-2005  
1999-2005  
1997-2003  
2001-2007  
2001-2007  
1997-2003

#### Hometown

Dallas  
Brownsville  
Lubbock  
Fort Worth  
Houston  
San Antonio  
Victoria  
Georgetown  
Midland

August 16, 2002

The Texas Real Estate Commission approved a Legislative Appropriations Request (LAR) for Fiscal Years 2004 and 2005 at its meeting in Austin on July 22, 2002. TREC's LAR was submitted to the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy on August 16<sup>th</sup> and includes a baseline request of \$4,455,351 for each year's operations plus four

expand its ability to review course criteria, ensure appropriate continuing education offerings, and upgrade the computerized record-keeping of educational data. Third, the Commission wishes to provide additional consumer information to the public and licensees via public service announcements, news releases and promotional materials to news media, and distribution of flyers and brochures. Finally, TREC is committed to ensuring needed technological improvements by refreshing its desktop computer capabilities, obtaining compatible software, acquiring an enterprise backup system, and upgrading existing network server systems.

"exceptional items" - requests for funds above the baseline funding.

As a self-sustaining licensing and regulatory agency, each year the Commission must produce revenue from its licensees and the public which exceeds the amount it is appropriated to spend. Most of that revenue comes from license renewal fees. Currently TREC receives a total of \$30 per year from each broker and salesperson license renewal and \$25 per year from each real estate inspector and professional inspector license renewal.

To ensure a continuing high level of customer service the agency has identified four areas which require appropriations authority beyond the base level allowed in previous years. These exceptional items were developed in conjunction with the public and reflected in the agency's Strategic Plan for 2003-2007.

The first priority is to retain its experienced and qualified employees. Competition from other state agencies reinforces the need to ensure our salary schedule approximates that available from other state agencies. A second need is for TREC to

The Texas Real Estate Commission is proud of its performance as a premiere licensing and regulatory agency, one which is highly regarded by the public and its licensees who provide the revenue needed to fund its operations. With appropriations authority to raise the funds required for these four exceptional items and the ability to spend such funds, TREC will be able to ensure a continuation of the high level of customer service to which its licensees and the public have become accustomed.

In addition to adopting its Legislative Appropriations Request, the Commission is now considering recommendations for possible legislative modifications to The Real Estate License Act, the Texas Timeshares Act, and the Residential Service Company Act. Individuals wishing to make suggestions for legislative changes are welcome to write the Commission at Post Office Box 12188, Austin, TX 78711. Any such Commission-endorsed recommendations would be presented for consideration by the Texas Legislature during its regular session beginning in January, 2003.



### Inside this issue...

Meeting Highlights .....	2
Changes in License	
Exam Services .....	3
Location of Exam Sites .....	3
Long on Ethics .....	4
Calendar of Events .....	6
Disciplinary Actions .....	6
Enforcement Q & A .....	7



**THE MISSION of the Texas Real Estate Commission**

is to assist and protect consumers of real estate services, and foster economic growth in Texas. Through its programs of education, licensing and industry regulation, the Commission ensures the availability of capable and honest real estate service providers.

**TEXAS REAL ESTATE  
COMMISSION****Meeting Highlights***July 22, 2002*

Official publication of the  
**Texas Real Estate Commission**  
Volume 13, Number 3  
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Governor

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The TRECAdvisor (ISSN 1047-4579) is published by the Texas Real Estate Commission (TREC) as an educational service to licensees in the state of Texas. The purpose of the newsletter is to promote a better understanding of the Real Estate License Act and to inform all licensees of changes affecting laws and practices in the real estate industry. The TRECAdvisor is funded through legislative appropriations and subscriptions collected from TREC licensees. The official text of TREC rules is filed with the Office of the Secretary of State, Texas Register. TREC encourages reproduction of this newsletter with the appropriate acknowledgments. Subscriptions are available for \$4.00 for two years. Single issues are \$1.00. To order a subscription or a single issue write to TRECAdvisor, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. For information regarding TREC, contact:

**Texas Real Estate Commission**  
P.O. Box 12188  
Austin, Texas 78711-2188  
(512) 459-6544 or (800) 250-TREC  
<http://www.trec.state.tx.us>

The Texas Real Estate Commission held a regularly-scheduled meeting at the TREC headquarters in Austin on Monday, July 22, 2002. This meeting was held on the same day as three other TREC-sponsored events which took place following the Commission meeting.

In conjunction with the annual Enforcement Division conference, all ten TREC Field Investigators were present and were introduced at the Commission meeting. An Orientation Session concerning changes in the examination program was conducted by a representative of PSI Examination Services following the Commission meeting. Finally, a group of subject matter experts were brought together to review the accuracy and relevance of items in the state test bank to ensure that licensee candidates were being

tested on the most applicable subjects.

The Commission gave final approval to a rule change to 22.535.214(a) whereby effective September 1<sup>st</sup>, a passing grade of 70 will be required on the real estate inspector examination and a passing grade of 80 mandatory on the professional inspector examination. This change was recommended by the Real Estate Inspector Committee to ensure a higher level of performance for those seeking the license of professional inspector.

In other rule action, the Commission amended 535.71 (c)(8) and 535.72 concerning a form for the reporting on completion of alternative instructional method courses. Both rule changes were adopted unanimously.

The agency's Legislative Appropriations Request for

FY04-05 was approved by the Commission in a unanimous vote as was the Information Services Biennial Operating Plan.

During staff reports, it was indicated that TREC continues to see an increase in the number of online transactions with approximately 45% of all new salesperson applications now being made via the Internet.

Three individual licensees appealed revocation decisions to the full Commission. Blake Allen Yarborough, Opal Diane Handy, and Christina Elizabeth Jones were respondents to three separate complaints brought to hearings before the administrative law judge. In all three situations, the Commission allowed the respondents to retain their real estate licenses.

The Commission authorized three payments totaling \$54,500 from the Real Estate Recovery Fund.

**License Renewals Online At No Extra Cost**

Real estate salespersons and brokers eligible for a two-year license renewal can now accomplish this task online at [www.trec.state.tx.us](http://www.trec.state.tx.us) for the same cost as if they paid by mail or in person.

Beginning with licenses with an expiration date of 9/30/02, the convenience fee for online credit card transactions has been eliminated. Now the same fee (\$507 for brokers; \$98 for salespersons) will apply regardless of the method used to make payment. This means that licensees can now use a credit card, possibly obtain airline mileage credit, spread the payment over time, and save on postage!

To renew online, licensees should have received a license renewal notification which includes a two-digit check number as well as your license number. With these in hand you are ready to renew online.

Effective September 1<sup>st</sup>, the convenience fee for submitting an original salesperson license application online has been eliminated. Individuals may submit an application by mail, in person, or online - all at the same cost.

Finally, beginning with a license expiration date of 1/31/03, all three types of inspector licensees will be able to renew online at the same cost as by mail or in person. These online renewals may be made beginning November 1, 2002.

## Changes in License Examination Procedures

Beginning **September 1<sup>st</sup>**, a number of significant changes will occur in the examination process for real estate and inspector license candidates. *If you know of individuals who are planning to take the real estate salesperson or broker examination - or the real estate inspector or professional inspector examination - please make sure they are aware of the following:*

- Upon completing an application for licensure, every candidate will receive a *letter of eligibility* from TREC with an identification number. This letter must be received prior to attempting to register for an examination.
- A *Candidate Information Brochure* will be mailed separately by the examination services provider or can be obtained via the Internet at [www.psiexams.com](http://www.psiexams.com)
- Candidates may now schedule an examination location, date, and time by either calling 1-800-RE-EXAM (1-800-733-9267) 24 hours a day and using the automated registration system or by going online at the web site [www.psiexams.com](http://www.psiexams.com)
- Examinations will be administered at the new *TREC Examination Centers* listed below. Some centers will be open only 2 or 3 days per week but ALL centers will be open on Saturday mornings.
- The cost is now \$59 per examination administration (each time you take the exam whether it is for both sections or only one section of the real estate examinations).
- You will be required to produce **two** forms of identification at the TREC examination center - one of which must be government issued, e.g., drivers' license, state issued I.D. card, and have your picture on it. Also, each candidate will have a picture taken at the examination center which will be reproduced on your examination score report.
- No walk-in registrations or same-day retakes will be allowed. Advance registration.

*(Continued on page 8)*

### TREC Examination Centers

The following is a list of the new TREC Examination Centers. Effective September 1, 2002 all real estate broker, salesperson, and inspector examinations will be administered at these locations. For information about scheduling an exam call PSI at (800) 733-9267 or access the website at [www.psiexams.com](http://www.psiexams.com)

#### **Abilene**

Commerce Plaza  
1290 S. Willis, Suite 109  
Abilene, TX 79605

#### **Dallas**

One Empire, 1140 Empire Dr., Suite 610  
Dallas, TX

#### **Houston (East)**

Atrium Building  
11811 East Freeway, Suite 260  
Houston, TX 77029

#### **Tyler**

3800 Paluxy Dr, Suite 310  
Tyler, TX 75703

#### **Amarillo**

1616 S. Kentucky, Suite 220  
Amarillo, TX 79101

#### **El Paso**

The Atrium  
1155 West Moreland, Suite 110  
El Paso, TX 79925

#### **Houston (Southwest)**

9000 W. Bellfort Ave, Suite 545  
Houston, TX 77031

#### **Waco**

345 Owen Lane, Suite 124  
Waco, TX 76710

#### **Arlington**

2008 E. Randol Mill Road, Suite 102  
Arlington, TX 76011

#### **Fort Worth**

6801 McCart Avenue, Suite B-1  
Fort Worth, TX 76133

#### **Lubbock**

The Center  
4413 82nd St., Suite 210  
Lubbock, TX 79424

**Texas examinations can be taken at the following Louisiana examination sites**

#### **Austin**

LaCosta Corporate Park  
3448 Hwy 290 East, Suite F111  
Austin, TX 78723

#### **Harlingen**

Executive Central  
722 Morgan Blvd, Suite C  
Harlingen, TX 78550

#### **Midland**

Elwood Office Center  
3404 W. Illinois, Suite 104  
Midland, TX 79703

#### **Lake Charles**

First National Bank  
One Lakeside Plaza, suite 813  
Lake Charles, LA 70601

#### **Corpus Christi**

2820 S. Padre Island Dr., Suite 105  
Corpus Christi, TX 78415

#### **Houston (North)**

Greenbriar Place  
650 North Sam Houston Pkwy E, Suite 535  
Houston, TX 77060

#### **San Antonio**

PS Business Park  
6800 Park Ten Blvd, Suite 175-W  
San Antonio, TX 78213

#### **Shreveport**

Madison Park  
3855 Gilbert  
Shreveport, LA 71104

## Long on Ethics —a business “thank you”.... referral fees

By Deborah E. Long, *Ed.D., DREI*

What should be one of the most pleasant and trouble-free aspects of a professional life is one of the most complex: saying “thank you” for a client referral.

When I was an active real estate practitioner, I lost a longtime friendship over the sale of a home. A colleague referred his sister to me, and after several weeks of showing her property, I successfully closed a lucrative sale, one that earned my firm about \$4,000 in total commissions. When I thanked my colleague with an appropriate note and a handshake, he made it clear

he expected a more tangible reward. I explained that real estate licensees cannot pay unlicensed individuals for providing referrals. He indicated that I could surely afford to be generous. I responded by explaining that of the \$4,000 my firm earned on that sale, I earned approximately \$1,000 before taxes and expenses. Moreover, I could not give him anything more than a hearty thank you without risking my license. His response was, “Yes, but who’s going to know?” Unfortunately, my answers did not satisfy him, and the friendship was irretrievably lost.

I wondered then, and still wonder why lay people expect monetary rewards from real estate agents and other licensed professionals. Is it because of a mistaken belief that we are earning thousands of dollars in fees? Is it because of greed? An expectation that we will compensate them because

they have seen others (illegally) compensated? Or is it a belief that in business, reciprocity should be a guiding principle—you scratch my back and I will scratch yours.

But when I give a new neighbor the name of my pediatrician or dentist, I have no expectation that the next time I receive professional service from my physicians that I will get a discount or cash back. I never even expect a thank you—and rarely have I received one. The only expectation I have is that my neighbor will receive the same professional service from my doctor and dentist, or I will never refer these professionals again.

Why don’t consumers have the same expectation of real estate practitioners and other licensed professionals? Part of the problem may lie in the conflict between licensing laws, federal laws, and business protocol. For example, real estate agents may pay other properly licensed real estate agents a referral fee through the broker. Real estate agents may give their clients—buyers or sellers—a discount on commission rates or housewarming presents for participating directly in a transaction. The prohibition of referral fees applies to unlicensed people not participating directly in a transaction.

Many business people—even those in regulated businesses—are permitted to accept and give referral fees and gifts. It is considered a polite gesture to give individuals who refer others a fruit basket, a modest gift certificate, or a dinner out.

While many corporations have codes of ethics limiting the amounts that can be spent on wooing business clients, there is a general understanding that reciprocity can be a form of business protocol and etiquette.

Another offensive practice that is currently making the rounds is paying fees to be placed on a “List of Recommended Vendors.”

In addition to criminal penalties, RESPA violations are being combined with other private lawsuit claims such as antitrust violations, exposing violators to additional civil liability.

The Federal Corrupt Practice Act prohibits U.S. companies from making payments or gifts to government officials for the purpose of influencing business decisions. First enacted in 1977, this law has been controversial from the start and was amended eleven years later because U.S. companies claimed to be at too great a competitive disadvantage with foreign companies. The act now allows payments to foreign officials where the purpose of the payment is to expedite routine governmental action, such as processing visas or providing police protection. Those accused of violating the Act may offer the defense that the alleged payoff was a normal and reasonable business expenditure.

Let’s set aside the issue of law, for just a moment. What are some of the ethical issues in giving or receiving referral fees?

As I mentioned earlier, I





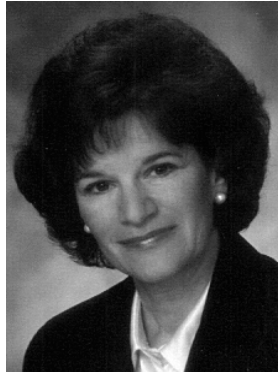
don't have any qualms about providing modest thank-you gifts to individuals who send me business—with one proviso: those referrals should be unsolicited. In other words, I should not make offers to reward consumers if they send me business. If satisfied clients wish to send me referral business without prompting on my part, it seems appropriate and polite to send a small gift.

If a firm wants to woo my business with token gifts, such as donuts, ballpoint pens, or even educational seminars—as long as there is no expectation that I will buy or recommend the firm's products, the gifts are acceptable. However, if the firm is trying to buy my recommendation of their product with expensive trinkets or junkets, the gift is really a bribe.

Another offensive practice that is currently making the rounds is paying fees to be placed on referral lists. If I must pay to have my firm placed on a "List of Recommended Vendors" I would conclude that the so-called recommended vendors are simply the ones who can afford the price of being on the list. The value of such a list is ethically questionable.

The Law Enforcement Code of Ethics states, "The public demands that the integrity of police officers be above reproach. Police officers, must, therefore, avoid any conduct that might compromise integrity and thus undercut the public confidence in a law enforcement agency. Officers will refuse to accept any gifts, presents, subscriptions, favors, gratuities, or promises that could be interpreted as seeking to cause the officer to refrain from performing official responsibilities honestly and within the law. Police officers must not receive private or special advantage from their official

status. Respect from the public cannot be bought; it can only be earned and cultivated." This high standard for police officers sets a high bar for all licensed professionals.



Deborah Long is the author of *Doing the Right Thing: A Real Estate Practitioners Guide to Ethical Decision Making* and provides continuing education programs for licensed professionals. Ms. Long may be reached at:

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**A Texas licensed real estate broker or salesperson may not give cash, rent bonuses or discounts to non-licensed persons for referrals. A Texas licensee may, however, give a gift of merchandise to a non-licensed person as a small token of appreciation as long as the gift has a retail value of less than \$50.**

## Referrals and Rebates What is Permissible

**Q. Can a licensee pay a non-licensee cash money for a referral from the non-licensee?**

**A. No.** A licensee cannot pay a non-licensee cash money, or its equivalent, for a referral. If a licensee wants to give a small token of appreciation to a non-licensed person for a referral from the non-licensed person, the licensee may give a gift or merchandise valued at \$50 or less to the non-licensee.

If gift certificates are given, they cannot be redeemed for cash, i.e., a recipient redeeming a gift certificate at a department store cannot receive cash back from a purchase amount that is less than the amount of the gift certificate.

**Q. Can a licensee receive a fee, rebate or commission from an unlicensed third party who sells a service to a party to the transaction, and, the party to whom the service is sold is not a client the licensee?**

**A. Yes,** but only if the licensee obtains the consent of the person who purchases the service. For example, if ABC Fencing Company wants to give Joe Licensee a fee for sending it business, Joe must first obtain the consent of the person he or she sends to ABC Fencing.

**Q. Can a licensee receive a fee, rebate or commission from an unlicensed third party who sells a service to a party to the transaction, and, the licensee represents a party involved in the transaction?**

**A. Yes,** but only if the licensee obtains the consent of the person he or she represents.

**Q. When is it permissible to give a rebate to a principal, and can I advertise that I will give rebates? If so, what are the parameters?**

**A. It is permissible** for a licensee to give a rebate to a principal in any real estate transaction as long as the licensee obtains the consent of the person the licensee represents. The law does not limit the amount of a rebate that may be paid to any party.

**Note:** Salespersons must have the consent of their sponsoring broker before paying a rebate.

**Advertising Rebates:** Advertising rebates is permissible under the law. The advertisement must state that the rebate is subject to the consent of the person the licensee represents. If the rebate is contingent upon a person using the services of a specific provider, the advertisement must disclose that the rebate is subject to restrictions. Keep in mind, however, that other general rules regarding advertising apply.



# Disciplinary Actions

## June 2002 - July 2002

### Calendar of Events

#### Commission Meetings:

September 9, 2002  
November 4, 2002  
January 6, 2003  
February 24, 2003

#### Broker-Lawyer Committee Meetings:

#### Web site:

<http://www.trec.state.tx.us>

#### Phone

(800) 250-TREC (8732)  
or  
(512) 459-6544

**Shepard, Ralph Gilbert**  
(Corpus Christi); license# 371000  
Revocation of salesperson license, effective June 6, 2002; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC Section 535.92(f) of the Rules of the Texas Real Estate Commission

**DeYoe, Raymond Alan**  
(Houston); license# 429470  
Revocation of salesperson license, effective June 6, 2002; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC Section 535.92(f) of the Rules of the Texas Real Estate Commission

**Stedman, Pamela Newman**  
(Richardson); license# 359148  
Revocation of salesperson license, effective June 6, 2002; failing to complete mandatory continuing education hours within the 60-day period provided by 22 TAC Section 535.92(f) of the Rules of the Texas Real Estate Commission

**Foster, Vicki Lynn**  
(Dallas); license# 331952  
Agreed reprimand of salesperson license, entered June 13, 2002; Agreed administrative penalty of \$200, entered June 13, 2002; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC Section 535.92(f) of the Rules of the Texas Real Estate Commission

**Richardson, Christine Ann (Houston); license# 217516**  
Agreed 60 day suspension of broker license fully probated for 1 year, effective June 14, 2002; Agreed administrative penalty of \$1,000, entered June 14, 2002; establishing an association with an unlicensed person who engaged in real estate brokerage activities, in violation of Section 15(a)(6)(S) of The Real Estate License Act; failing to exercise oversight and supervision of a real estate company and permitting an unlicensed person to engage in real estate brokerage activities, in violation of Section 15(a)(6)(W) of The Real Estate License Act

**McGuire, Elizabeth P.**  
(Dallas); license# 399920  
Revocation of salesperson license, effective June 17, 2002; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC Section 535.92(f) of the Rules of the Texas Real Estate Commission  
**Morton, Robert B.**

(Texarkana); license# 4955  
Agreed 2-month suspension of apprentice inspector license, effective June 24, 2002; Agreed administrative penalty of \$500, entered June 24, 2002; acting as an apprentice inspector without the direct supervision of a real estate inspector or professional inspector, in violation of Section 23(c)(3) of The Real Estate License Act; incorrectly advertising, including in an inspection report, the name of the person's sponsoring professional inspector and indicating that the person is sponsored by that professional inspector, in violation of 22 TAC Section 535.221(b) of the Rules of the Texas Real Estate Commission

**Woodward, Fred J.**  
(Houston); license# 402889  
Agreed reprimand of salesperson license, entered June 25, 2002; Agreed administrative penalty of \$200, entered June 25, 2002; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC Section 535.92(f) of the Rules of the Texas Real Estate Commission

**Okolie, Wilfred Osita**  
(Houston); license# 385371  
Agreed reprimand of broker license, entered July 1, 2002; Agreed administrative penalty of \$500, entered July 1, 2002; using an unlicensed assistant to negotiate the sale of a business which involved an assignment of a lease of real property, thereby establishing an association with an unlicensed person who was expected or required to act as a real estate licensee, or aiding or abetting or conspiring with a person to circumvent the requirements of the Act, in violation of Section 15(a)(6)(S); acting negligently or incompetently in performing an act for which a person is required to hold a real estate license, in violation of Section 15(a)(6)(W) of the Real Estate License Act

**Ranson, Amy Waller**  
(San Antonio); license# 376408  
Agreed reprimand of salesperson license, entered July 17, 2002; Agreed administrative penalty of \$200, entered July 17, 2002; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC Section 535.92(f) of the Rules of the Texas Real Estate Commission

**Askew, Richard E.**  
(Rowlett); license# 481630  
Agreed reprimand of salesperson license, entered July 25, 2002; failing to provide the Information About

Brokerage Services form to a seller, who represented himself, and failing to obtain final signatures of both parties to a sales contract intended by the parties to be a finally executed contract, in violation of Section 15(a)(6)(W) of The Real Estate License Act

**Handy, Opal Diane**  
(Houston); license# 361716  
Revocation of broker license probated for one year, effective July 26, 2002; submitting invoices as an apartment locator to collect referral fees for tenants which were not referred by her or anyone associated with her, thereby knowingly withholding from or inserting in a statement of account or invoice, a statement which made it inaccurate in a material particular, in violation of Section 15(a)(6)(Q); engaging in conduct which constitutes dishonest dealings, bad faith, or untrustworthiness, in violation of Section 15(a)(6)(V); failing to ensure that invoices sent for payment were accurate, thereby acting negligently or incompetently in performing an act for which a person is required to hold a real estate license, in violation of Section 15(a)(6)(W) of The Real Estate License Act

**Yarborough, Blake Allan**  
(Houston); license# 448979  
Agreed 90-day suspension of broker license fully probated for 6 months, effective July 26, 2002; acting negligently or incompetently by failing to exercise adequate supervision over the activities of an unlicensed assistant who acted as a real estate salesperson without a license, signed a client's name to a real estate contract without the client's consent, and caused the client's earnest money to be deposited with a title company without the client's consent, in violation of Section 15(a)(6)(W) of The Real Estate License Act

**Ballard, Jeffery Ty**  
(Austin); license# 443478  
Revocation of salesperson license, effective July 30, 2002; payment of \$50,000.00 made by the Texas Real Estate Commission from the Real Estate Recovery Fund toward satisfaction of a judgment against Jeffery Ty Ballard, in violation of Section 8(i) of The Real Estate License Act

**Jones, Christina Elisabeth**  
(Copperas Cove); license# 273133  
6-month suspension of broker license fully probated for 1 year, effective July 31, 2002; preparing a contract which did not accurately reflect the property description and the true agreement of the seller and buyer, in violation of Section 15(a)(5)(W); deficiencies in formalizing the intermediary relationship, in violation of Section 15C(h) of The Real Estate License Act

## Recent Enforcement Questions and Answers

**Q. I have a broker's license. I just incorporated. Do I have to obtain a license from TREC for my corporation? If so, what do I do?**

**A.** Yes, a "person" engaged in real estate brokerage services must first hold a real estate license. Under §2(5) of the Real Estate License Act, the definition of a "person" includes an individual, a corporation and a limited liability company. A broker, who is an officer of the corporation, must file an application for broker license by a corporation with the Texas Real Estate Commission. Applications are available on the web site at: <http://www.trec.state.tx.us/licenses/brokerapp.asp>

**Q. My business is "ABC Realty." I would like to call it "John's ABC Realty." Can I do this? If so, does TREC require notification?**

**A.** Yes. Section 535.154(c) of the Rules of the Commission require a broker to notify TREC within 30 days, in writing, after the broker, or a salesperson sponsored by the broker, starts or stops using a name in business other than the name on their license. A copy of the assumed name or doing business as (dba) certificate issued by the county or state may be attached to the written notice. However, if John is a salesperson, an advertisement must also include the sponsoring broker's name or assumed name.

**Q. My inspector did not properly inspect my roof. After the purchase of my home, I discovered the problem. I now find that I must spend \$8000.00 to repair the roof. Can you force my inspector to pay for these repairs?**

**A.** TREC has no jurisdiction to mandate the payment of damages from one party to another. TREC is the licensing and regulatory agency for real estate inspectors. However, TREC can take action against the license of an inspector for violation of our laws and rules. If there is evidence the inspector violated any laws or rules when inspecting your roof, we have the authority to take action ranging from a written reprimand to revocation of his license. If you believe there is a violation, you may file a signed, written complaint with the Commission. See the "Complaints" tab of the TREC web site for details of filing. Any claim for monetary damages must be pursued in civil court.

If you sue the inspector to recover your costs, and you win, TREC maintains an Inspection Recovery Fund from which you may recover your loss under certain conditions, IF the inspector is unable to pay.

**Q. My inspector told me he was not required to "walk" my roof during the inspection. Is that correct?**

**A.** If the inspector reasonably has determined that he or she cannot safely reach or stay on the roof, or that damage to the roof or the roof covering may result from walking on the roof, he or she is exempted from "walking" the roof or examining it from roof level. However, the inspector must report the method used to inspect the roof if inspected from other than roof level.

**Q. I was recently presented a contract on one of my listings. The other agent utilized paragraph 7.D. and asked for specific repairs on the home. The agent also utilized paragraph 23 for the purpose of an inspection to determine if any additional repairs might be requested. Can the buyer now make requests for additional repairs after the inspection?**

**A.** Yes, as long as the buyer requests the additional repairs within the option period. If the seller does not agree to change the terms of the contract to include the additional repairs, the buyer has the option to terminate the contract within the option period. Note that the contract must be amended or terminated before the end of the option period or the terms of the original contract will apply.

When the option paragraph was part of paragraph 7, the buyers had to choose between the option fee in Paragraph 7.D.1 or the list of repairs in 7.D.2. In the new contracts, the buyers can request repairs in paragraph 7.D. and pay an option fee to terminate the contract within the option period. Thus, there is more flexibility to work out additional repairs discovered by the inspector during the option period but not listed on the original contract.

**Q. Regarding the use of an existing survey in paragraph 6, if the title company and buyer's lender accept an old survey, can the seller provide a copy of the survey with the affidavit that there have been no changes since the date of the last survey?**

**A.** In order to avoid a claim that providing a copy of the survey violates federal copyright law, the seller should provide the original survey with the affidavit, rather than a copy of the survey.

### ***Surge in Younger, Older New Salespersons***

Texas has experienced a surge in new salesperson license applicants over the past year - a surge that has brought into the business many new younger - and older - licensees.

During the current fiscal year (September 1, 2001-August 31, 2002), there has been a 44.2% increase in original applications for real estate licensure as compared with the same period last fiscal year. This surge has resulted in twenty consecutive months of increases in the number of real estate salespersons and brokers in Texas. The current total of more than 116,000 licensees is the highest amount of licensees in more than five years.

Interestingly enough, these new salesperson licensees are both younger and older this year. Those age 25 and below constitute 15% of all new licensees compared to 13% in the previous time frame. At the same time, 46% of all new salespersons this year were age 46 or older (24% are 55+) contrasted with only 29% in the prior year.

More males appear to be obtaining real estate salesperson licenses also. The percentage of new male salespersons increased from 41.6% to 44.0%. While there were more African-American salesperson applicants this year, the larger percentage increases were among Hispanic and Asian real estate salespersons. Slightly more than 70% of new real estate salespersons this year describe themselves as Anglo. Most new licensees are located in the four major metropolitan areas of the state.



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(Continued from page 3)

tion and payment must be made with PSI Examination Services prior to taking an exam.

- Both the real estate inspector and the professional inspector examinations now consist of 150 questions to be completed in three hours.
- A passing score for real estate salesperson and broker examinations is 70. The passing score for real estate inspector examinations is 70 while the professional inspector examination requires a passing score of 80.

Further information on these examinations can be found on the TREC web site at [www.trec.state.tx.us](http://www.trec.state.tx.us) or at the PSI Examination Services web site at [www.psiexams.com](http://www.psiexams.com)



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## Got A Question About A Relocation Company?

Through a link maintained on the TREC web site, licensees may directly access The Real Estate Coalition for Cooperative Business Practices (the Coalition) of the Employee Relocation Council by clicking on "The Interchange" on the Coalition's website at

<http://coalition.erc.org>

Licensees may raise concerns about their dealings with a relocation company and send a message to the appropriate company for response.



**Beginning with inspector licenses that expire on or after January 31, 2002, apprentice inspectors, real estate inspectors and professional inspectors will be able to renew their licenses on the Internet with a credit card.**

Note, however, that real estate and professional inspectors must provide proof of completion of annual education requirements prior to renewal or the license will renew on inactive status. While the practice in the past has been to submit evidence of completion of the required education in conjunction with a renewal, you should *submit the evidence of completion to TREC as soon as you complete a course*. Thus, TREC will have the required proof in our records and your license will automatically renew on active status should you wish to renew on line.